

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LATAUSHA SIMMONS,

Petitioner,

Civil No. 2:24-CV-11454

HONORABLE DENISE PAGE HOOD

v.

UNITED STATES DISTRICT JUDGE

RAPHAEL WASHINGTON, et al.,

Respondents,

_____ /

ORDER DENYING MOTION TO STAY OF STATE COURT
PROCEEDINGS AND MOTION FOR CERTIFICATE
OF APPEALABILITY (ECF No. 12)

Latausha Simmons (“Petitioner”) filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. This Court denied the petition for writ of habeas corpus, the request to stay, and declined to issue a certificate of appealability, but granted petitioner leave to appeal *in forma pauperis*. (ECF No. 6). Petitioner filed a Notice of Appeal. (ECF No. 8). Petitioner also filed a motion for a certificate of appealability which the Court denied without prejudice pending transfer to the Sixth Circuit Court of Appeals. (ECF Nos. 10, 11). In this current motion, Petitioner seeks reconsideration of the Court’s order denying the request to stay proceedings before the State court and the order denying the request to issue a certificate of appealability.

The decision of whether to grant a motion to alter or amend the judgment under Fed. R. Civ. P. 59 is discretionary with the district court. *Davis by Davis v. Jellico Cmty. Hosp., Inc.*, 912 F.2d 129, 132 (6th Cir. 1990). A motion to alter or amend the judgment will generally be granted if the district court made a clear error of law, if there is an intervening change in the controlling law, or if granting the motion will prevent manifest injustice. *GenCorp, Inc. v. Am. Int’l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999). “A Rule 59 motion ‘may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.’” *Brumley v. United Parcel Serv., Inc.*, 909 F.3d 834, 841 (6th Cir. 2018)(quoting *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 486, n. 5 (2008)(additional quotation omitted)). In addition, a Rule 59(e) motion to alter or amend the judgment is not a substitute for an appeal. *See Johnson v. Henderson*, 229 F. Supp. 2d 793, 796 (N.D. Ohio 2002).

Petitioner’s current motion raises the same arguments previously raised as to staying the State court proceedings. Petitioner has not shown that the Court clearly erred in its ruling or that granting the stay would prevent manifest injustice.

As to the certificate of appealability, the Court declined to issue such in two previous orders. That issue has been transferred to the Sixth Circuit Court of Appeals for its consideration.

Accordingly,

IT IS ORDERED that the Motion to Stay State Court Proceedings and for Certificate of Appealability (**ECF No. 12**) is **DENIED**.

s/Denise Page Hood

HON. DENISE PAGE HOOD

UNITED STATES DISTRICT JUDGE

DATED: September 18, 2024